IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 24330 of 2007(U)

PETITIONER:

D.VIJAYADHARAN,
CHAKKACHERIL, MOSQUE LANE, KESAVADASAPURAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

STATE BANK OF TRAVANCORE,
MAIN BRANCH, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA SC FOR SBT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J

W.P.(C).24330/2007

Dated this the 19th day of November, 2007

JUDGMENT

Proceedings initiated against the petitioner under the Securitization Act is under challenge. Petitoiner submits that a request was made for One Time Settlement and that was accepted by the Bank by Ext.P3 on payment of Rs.6.25 Lakhs. Ext.P3 also directed that the amount should be paid in the manner that was mentioned in the said order. However that was not done which resulted in the initiation of proceedings under the Act.

2. The Bank has filed a counter affidavit in which it is stated that in 1998, an Educational loan of Rs.4,00,000/- was availed of by the petitioner by offering an immovable property as security. The loan ought to have been paid in equal monthly instalments commencing from 2000. There was default committed by the petitioner as result of which recovery of the amount of Rs.5,88,920/- along with the interest was ordered. Even thereafter since defult continued a suit was filed before the Sub Court as

O.S.No.31/2001 which was decreed on 10.4.2002. It is stated that the execution petition was filed on 1.11.2003 for realization of Rs.9,05,759/- and at that stage petitioner approached the Bank by filing Ext.P2 which was accepted and by Ext.P3 petitioner was allowed to settle the liability for Rs.6.25 Lakhs on or before 31.12.2004 or Rs.6,30,275/- on or before 28.2.2005. It is stated that though the petitioner remitted Rs.2,23,769/- , default was committed in so far as the balance amount is concerned. It is stated that as the default continued, the Bank initiated proceedings under the Securitization Act, for which it was entitled to.

3. Bank would contend that in view of the default that was committed by the petitioner to comply with the terms of Ext.P3, proposal of One Time Settlement did not materialise and that the Bank is now insisting that they are entitled to realise the amount in terms of the decree of the Court. In my view, the Bank cannot be faulted for this stand. Since the conditions specified by

the Bank in Ext.P3 were not complied with and as default was committed by the petitioner, the Bank is entitled to demand payment of the amount due as per the Decree.

4. At the end of the submissions, petitioner prays that he be permitted to repay the amount in instalments so that coercive action against the immovable property could be avoided.

5. I heard the learned counsel for the Bank on this request made by the petitioner.

6. Having considered the rival submissions made, as a last chance, I am inclined to permit the petitioner to pay the amount in the following manner:-

7. Petitioner shall remit an amount of Rs.4,00,000/- (Four Lakhs) within one month from today with the Bank and thereafter if he makes a representation to the Bank to enable him to know the actual balance dues, the Bank

shall make available the statement of accounts to the petitioner. The amount so quantified and intimated to the petitioner shall be re-paid by him in four equal monthly instalments commencing from 15.1.2008 and subsequent instalments will also be payable on 15th of every succeeding month. If the petitioner commits default in remitting anyone of the instalments, Bank will be free to proceed against the petitioner without further notice.

Writ petition is disposed of as above.

ANTONY DOMINIC
Judge

mrcs